IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

S.A.O. No. 14 of 2002
Date of decision September 13, 2006

Sudesh Kumar Gupta

.....Appellant

Versus

Municipal Council, Jind

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINEY MITTAL

Present:- Sh. Surya Parkash, Advocate
for the appellant.

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Viney Mittal, J (Oral)

The plaintiff is the appellant before this Court. He is aggrieved against the order dated March 15, 2002 passed by the learned Additional District Judge, Jind whereby in an appeal filed by the defendant Municipal Council, Jind, after allowing the amendment of the written statement, the matter has been remanded back to the learned trial Judge for a fresh decision.

During the course of arguments, Sh. Surya Parkash, learned counsel appearing on behalf of the appellant has brought to my notice that the learned District Judge, while remanding the case back to the trial Judge, had made observations on merits of the case and had even held that the suit filed by the plaintiff was not maintainable. The learned counsel has argued that once the matter was being remanded back to the trial Judge for a fresh decision after framing additional issues arising out of the amended pleadings, the aforesaid observations of learned District Judge

are unwarranted and are likely to prejudice the case of the plaintiff.

I have duly considered the aforesaid arguments of the learned counsel and have perused the impugned order passed by learned District Judge dated March 15, 2002. In my considered view, the appellant cannot take any exception to the order of the remand of the case passed by the learned District Judge inasmuch as the amendment of the written statement of the defendant has been allowed. Out of the amended pleadings additional issues arise for consideration.

However, the plaintiff-appellant is absolutely justified in making grievance against the observations made by the learned District Judge on the merits of the controversy.

Consequently, the present appeal is disposed of and the order dated March 15, 2002 passed by the District Judge, Jind is upheld to the extent that the matter has been remanded back to the trial Judge for a fresh decision after permitting the amendment of the written statement and allowing the plaintiff to file replication to the amended written statement. The trial Judge shall also consequently frame additional issues arising out of the amended pleadings of the parties. However, it is directed that none of the observations made on the merits of the controversy by the learned District Judge, Jind shall be taken into consideration by the trial Judge while re-deciding the matter a fresh.

The present appeal is disposed of with the aforesaid directions.

The parties through their counsel are directed to appear before the trial Judge on November 6, 2006.

(VINEY MITTAL)
JUDGE

September 13, 2006
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